THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

TAXATION REFERENCE NO.294 OF 2019

(Arising out of Election Petition Appeal No.284of 2019)

SSENKUBUGE ISAAC **APPELLANT**

VERSUS

TAMALE JULIUS KONDE **RESPONDENT**

Coram: Moses Kazibwe Kawumi, JA.

(Single Justice)

RULING

This taxation reference was lodged by the Applicant under Rule 110(3) of the Judicature (Court of Appeal Rules) Directions S.I. 13-10 to challenge the decision of Her Worship Agnes Nkonge in her capacity as a taxing officer in a Bill of costs filed by the Respondent. Particularly contested is an award of UGX.38 million allowed as Instruction fees.

Background

The background to the reference is that the Respondent contested for the position of Chairperson Bweyogerere Division,Kira Municipality in Wakiso District and lost. The Respondent filed Election Petition Appeal No.30 of 2016 against the Appellant. The Appellant raised objections to the Petition which were upheld by the High Court which prompted the Respondent to file Election Petition Appeal No.75 of 2016 in the Court of Appeal.

The Respondent was successful and the Petition was referred back to the High Court for conclusion of the trial. The Respondent was awarded costs by this Court which were allowed at UGX.43, 726,600/- inclusive of UGX.38 million as Instruction fees which sum is contested by the Appellant.

Representation

M/S Signature Advocates represented the Appellant while M/S Lukwago & Co. Advocates represented the Respondent.

At the hearing of the Appeal held on 5th September 2024, the submissions filed by Counsel for the parties were adopted as their arguments for purposes of determining the Reference.

Arguments by Counsel

It was argued for the Appellant, that the Appeal was neither novel nor complex since it was a normal election appeal. Counsel further argued that the Appeal was not premised on a matter of law and required no re-evaluation of evidence.

Counsel pointed out that Election Petition Appeals are special cases wherein ordinary principles of taxation do not apply considering that parties run for a public office and there is need not to discourage aspirants from running for public offices. Reliance was placed on **Lanyero Sarah Ochieng & EC Vs. Lanyero Molly. Civil Reference No.225 of 2013** for the proposition and the prayer for the Reference to be allowed with costs to the Appellant.

The Respondent on the contrary argued that the award of UGX.38 million was reasonable given that the appeal was complex. It was argued that the Respondent raised nine grounds of Appeal which were successfully

argued but the Reference was lodged to frustrate the Respondent from enjoying the fruits of his judgment.

Counsel cited **Uganda Revenue Authority Vs. Rock Petroleum (U) Ltd. CACA No.199 of 2013** to bolster his argument.

Counsel for the Appellant re-iterated the same arguments in re-joinder and offered no suggestion on what would amount to reasonable fees given the nature of the Appeal.

Decision

I have considered the submissions by Counsel and also perused the authorities cited in support of the respective positions. It is evident on the record of proceedings that the thrust of the Appeal was on the setting aside of the decision to strike out some affidavits by the trial Court. The Appeal also concerned some uncertified Declaration of Results Forms.

Arguments relating to the merit of the Election Petition as such were not made which would have required complex analysis and re-evaluation of evidence by the Court of Appeal. This is not to imply that no work was done by Counsel for the Respondent in having the decision of the High Court set aside. A reasonable fee for the work done has however to be arrived at and awarded by the court based on the Rules.

Rule 110(3) of the Judicature (Court of Appeal Rules)Directions.SI 13-10 provides that any person who contends that a bill of costs as taxed is, in all the circumstances, manifestly excessive or inadequate may require the bill to be referred to a judge; and the judge may make such deduction or addition as will render the bill reasonable.

The guiding principles in taxing bills of costs are set out in Rule 9 of the **3rd schedule to the Judicature (Court of Appeal Rules) Directions.** Rule 9(2) provides :-

> *"The fee to be allowed for instructions to appeal or oppose an appeal application shall be a sum that the taxing officer considers reasonable, having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings, the fund or person to bear the costs and all other circumstances."*

It is trite to state that no monetary value is attached to the election exercise from which the instant appeal emanates but it was a matter of importance to both the candidates, the electorate in Bweyogerere Division and the Nation at large. The Court is however also alive to the necessity for costs not to be used to discourage potential candidates from contesting for elective positions in the event that matters end up in courts of Law.

A balance of the remuneration of advocates and successful litigants with the need to develop democratic principles should empower and encourage active political participation of citizens in good governance as observed by **Kakuru JA in Lanyero Sarah Ochieng & Another Vs. Lanyero Molly** (supra).

Based on the above observations, the taxing officer did not arrive at a reasonable amount for instruction fees more so since the Election Petition had not been concluded. I deem the award of UGX.38 million to be excessive in the circumstances. The instruction fee is reduced and awarded at UGX. 15,000,000/= (Fifteen Million).

5 The taxation Reference succeeds with costs to the Appellant as the successful party.

Delivered and dated at Kampala this ...12th.... Day of ...September.....2024.

10 **Moses Kazibwe Kawumi**
JUSTICE OF APPEAL